UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 9-RC-83978

THE ARDIT COMPANY,

Employer,

and

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTWORKERS, OHIO KENTUCKY ADMINISTRATIVE DISTRICT COUNCIL, LOCAL UNION NO. 18,

Petitioner.

PETITIONER'S MEMORANDUM IN OPPOSITION TO REQUEST FOR REVIEW AND MEMORANDUM IN OPPOSITION TO MOTION TO STAY

MANGANO LAW OFFICES CO., L.P.A.

/s/Ryan K. Hymore

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Counsel for Petitioner

Date: September 27, 2012

MEMORANDUM IN OPPOSITION TO REQUEST FOR REVIEW AND MOTION TO STAY

I. ISSUES PRESENTED

The Employer argues that the Regional Director erred by overruling the Employer's frivolous and unsupported objections to the Union's conduct leading up to the election.

Moreover, the Employer requests the Board to stay its consideration of this matter based on arguments previously rejected in *Center for Social Change, Inc.*, 358 NLRB No. 24 (Mar. 29, 2012).

II. ARGUMENTS AND AUTHORITIES

A. No Compelling Reasons Support the Employer's Request for Review.

"The Board will grant a request for review only where compelling reasons exist therefor." 29 CFR 102.67(c). To be sure, such a request may be granted only when the Board is presented with evidence of one of the following:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 CFR 102.67(c)(1)-(4). The Employer has not demonstrated that any of the foregoing grounds are present. As such, its request for review should be denied.

B. The Employer Has Not Presented Any Evidence Whatsoever.

Although the Employer lodged timely objections to the Union's conduct during the election process, it presented no evidence whatsoever in support of those

objections. Those unsupported and frivolous objections were properly overruled by the Regional Director. Despite providing no evidence to the Regional Director, the Employer has requested review. Yet, the Employer failed to attach the Regional Director's decision or any evidence in support of its request for review. Again, it would be unable to attach any evidence to its request for review because it failed to present any evidence to the Regional Director in the first instance. 29 C.F.R. § 102.67(d) ("But such request may not raise any issue or allege any facts not timely presented to the regional director."). As such, it was proper for the Regional Director to overrule the objections forthwith. The Employer's frivolous request for review should be denied.

C. The Motion to Stay Should Be Denied.

For the reasons stated in *Center for Social Change, Inc.*, 358 NLRB No. 24 (Mar. 29, 2012), the Employer's motion to stay should be denied.

CONCLUSION

Based on the foregoing arguments, the Employer's request for review and motion to stay should be denied.

Respectfully submitted,

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Counsel for Petitioner

CERTIFICATE OF SERVICE

	Ryan K. Hymore
	s/Ryan K. Hymore
Counsel for the Employer	
Ron Mason, Esq. Aaron Tulencik, Esq.	
Region 9, via electronic filing	and by email upon the following:
this 27th day of September 20	012 upon the Board and Regional Director Gary Muffley,
I hereby certify that a	copy of the foregoing Memorandum in Opposition was served